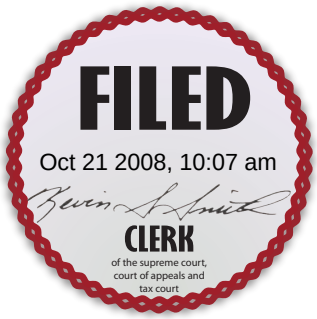

ATTORNEY FOR APPELLANT:

GREGORY L. FUMAROLO
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

THOMAS D. PERKINS
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

SANCHEZ WILLIAMS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A05-0803-CR-166
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0704-FB-49

October 21, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Sanchez Williams appeals his conviction and sentence for Burglary, as a Class B felony.[1] We affirm.

Issues

Williams raises three issues on appeal:

I. Whether there is sufficient evidence to support his burglary conviction;

II. Whether the trial court erred in failing to instruct the jury as to the lesser included offense of Residential Entry; and

III. Whether his sentence is inappropriate.

Facts and Procedural History

On April 8, 2007, Easter Sunday, Anthony Morgan, Sr., drove to Lima, Ohio to visit family. Before leaving his home in Fort Wayne, he locked the front door. One of Morgan's sons also drove to Lima, in a separate car, with his wife and children. When they returned that night to Morgan's home in Fort Wayne, Morgan and his son heard noise coming from the house as they were standing in the driveway. The son grabbed a baseball bat from his car, and he and Morgan confronted three young men coming out of the house. Morgan and his son pushed the three back into the house and made them sit on the staircase until the police arrived. Williams was one of the three men.

While they waited for the police to arrive, Williams provided Morgan two different explanations as to how they entered Morgan's home. The first explanation was that the front door just opened when they pushed on it. The second was that some person named Larry had

let them into the house.

Upon inspection of the house, Morgan noticed that there were two coats and several containers of body wash downstairs. Morgan testified that these items had been upstairs when he left that morning. The wooden board that was set on brackets across the back door had been taken out of the brackets and was leaning against the wall. The back door had a padlock on it on the outside of the home. There were also pry marks on the front door near the lock.

When police interviewed Williams, he said that Larry had let them into the home, which according to Larry was abandoned, for the purpose of getting a drink of water. Police used a computer program called Spillman to identify or locate the individual Williams claimed to have let the group into Morgan's home, but they were unsuccessful. Williams was subsequently charged with Burglary, as a Class B felony. A jury found Williams guilty as charged. The trial court sentenced Williams to twelve years imprisonment.

Williams now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

First, Williams alleges that there was insufficient evidence to support his conviction, claiming that the State failed to prove that he knew he did not have consent to enter the home and that he intended to commit a theft. In addressing a claim of insufficient evidence, we do not reweigh the evidence nor reevaluate the credibility of witnesses. Rohr v. State, 866

---

[1] Ind. Code § 35-43-2-1(1)(B).

N.E.2d 242, 248 (Ind. 2007), reh'g denied. We view the evidence most favorable to the verdict and the reasonable inferences therefrom and will affirm the conviction if there is substantial evidence of probative value from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. Id.

To convict Williams of Burglary, as charged, the State was required to prove that Williams (1) broke and entered (2) a dwelling of another person (3) with the intent to commit theft therein. See Ind. Code § 35-43-2-1. Williams asserts that he did not know that he was without consent to enter the home because an individual named Larry gave the three men permission to enter. This argument is just a request that we reweigh the evidence. This is the duty of the trier of fact, and based on the verdict, the jury did not find Williams's explanation credible.

Next, Williams argues that there is insufficient evidence to show that he had the intent to commit theft because he only intended to take a drink of water. He asserts that this "exertion of control over that water is '*de minimis[,]*' making the 'taking' at best conversion[.]" Appellant's Brief at 9. The statutes for theft and conversion are not distinguished by the value of the property taken but whether the taking is done with the intent to deprive the other person of any part of its value or use. Compare I.C. §§ 35-43-4-2 and 35-43-4-3. Furthermore, there is evidence that other items in the house were moved: two coats and several bottles of body wash. Therefore, there is sufficient evidence that Williams intended to commit theft inside the home.

II. Proposed Jury Instruction

Second, Williams argues that the trial court erred in refusing his proffered instruction on the lesser-included offense of Residential Entry. On appeal, Williams asserts that, because the water had a *de minimis* value, there was a serious evidentiary dispute regarding the element of intent to commit theft. "When asked to instruct the jury on a lesser included offense, the trial court is required to determine whether the lesser offense is either inherently or factually included in the crime charged. If so, then the court is required to review the evidence to assess whether there is a 'serious evidentiary dispute' about the element or elements distinguishing the greater from the lesser offense." Barker v. State, 695 N.E.2d 925, 932 (Ind. 1998). As we explained above, the value of the property taken is not a consideration that goes to the element of intent to commit theft. Therefore, this factor does not cause a serious evidentiary dispute. The trial court did not error in declining to instruct the jury on Residential Entry.

III. Sentence

Finally, Williams claims that his twelve-year sentence is inappropriate. Our Supreme Court recently reviewed the standard by which appellate courts independently review criminal sentences:

> Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana Appellate Rule 7(B), which provides that a court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The burden is on the defendant to persuade us that his sentence is inappropriate.

Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted). The range of possible sentences for a Class B felony is between a minimum of six years and a maximum of twenty years with an advisory sentence of ten years. Ind. Code § 35-50-2-5. Thus, Williams's sentence is two years above the advisory sentence.

As to the nature of the offense, Williams broke into Morgan's locked home and was discovered by Morgan. Although he was cooperative to some degree when confronted by Morgan and his son, there is evidence that Williams and his companions first attempted to escape out the back door without success.

As for the character of the offender, Williams, who was eighteen at the time of the offense, has a long list of juvenile adjudications of delinquency including acts that if committed by an adult would constitute criminal mischief, theft, burglary, and receiving stolen property. Six days prior to the commission of the current offense, Williams was convicted and sentenced as an adult for battery and resisting law enforcement. Based on his unending pattern of criminal activity, we are not persuaded that Williams's sentence is inappropriate.

Affirmed.

RILEY, J., and BRADFORD, J., concur.